

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANDREW PRESTON MARTELL,

Defendant.

CR 05-119-GF-BMM-JTJ

**AMENDED FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Andrew Preston Martell (Martell) has been accused of violating the conditions of his supervised release. Martell admitted alleged violations 1, 2, 3 and 4. The Court dismissed alleged violation 5 on the government's motion. Martell's supervised release should be revoked. Martell should be placed in custody for 4 months, with 70 months of supervised release to follow. The sentence imposed in this case should run concurrent with the sentences imposed in Causes CR 05-120-GF-BMM-JTJ and CR 18-104-GF-BMM-JTJ.

II. Status

Martell pleaded guilty to Aggravated Sexual Abuse on October 19, 2005. (Doc. 14). The Court sentenced Martell to 148 months of custody, followed by 7

years of supervised release. (Doc. 20). Martell's current term of supervised release began on December 6, 2021. (Doc. 54 at 2).

Petition

The United States Probation Office filed a Petition on May 27, 2022, requesting that the Court revoke Martell's supervised release. (Doc. 54). The Petition alleges that Martell violated the conditions of his supervised release: 1) by using marijuana; 2) by consuming alcohol; 3) by failing to report for substance abuse testing; 4) by failing to successfully complete his sex offender treatment program; and 5) by failing to maintain full time employment.

Initial appearance

Martell appeared before the undersigned for his initial appearance on June 14, 2022. Martell was represented by counsel. Martell stated that he had read the petition and that he understood the allegations. Martell waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a joint revocation hearing on June 14, 2022, in this case, in Cause CR 05-120-GF-BMM-JTJ and in Cause CR 18-104-GF-BMM-JTJ. Martell admitted that he had violated the conditions of his supervised release:

1) by using marijuana; 2) by consuming alcohol; 3) by failing to report for substance abuse testing; and 4) by failing to successfully complete his sex offender treatment program. The Court dismissed alleged violation 5 on the government's motion. The violations that Martell admitted are serious and warrant revocation of Martell's supervised release.

Martell's violations are Grade C violations. Martell's criminal history category is I. Martell's underlying offense in this case is a Class A felony. Martell's underlying offense in Cause CR 05-120-GF-BMM-JTJ is a Class C felony. Martell's underlying offense in Cause CR 18-104-GF-BMM-JTJ is a Class D felony. Martell could be incarcerated for up to 60 months. Martell could be ordered to remain on supervised release for 74 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 3 to 9 months in this case.

III. Analysis

Martell's supervised release should be revoked. Martell should be incarcerated for 4 months, with 70 months of supervised release to follow. This sentence is sufficient but not greater than necessary. The sentence imposed in this case should run concurrent with the sentences imposed in Causes CR 05-120-GF-BMM-JTJ and CR 18-104-GF-BMM-JTJ.

IV. Conclusion

The Court informed Martell that the above sentence would be recommended to United States District Judge Brian Morris. The Court also informed Martell of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Martell that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The Court **FINDS:**

That Andrew Preston Martell violated the conditions of his supervised release: by using marijuana; by consuming alcohol; by failing to report for substance abuse testing; and by failing to successfully complete his sex offender treatment program.

The Court **RECOMMENDS:**

That the District Court revoke Martell's supervised release and commit Martell to the custody of the United States Bureau of Prisons for 4 months, with 70 months of supervised release to follow. The sentence imposed in this case should run concurrent with the sentences imposed in Causes CR 05-120-GF-BMM-JTJ and CR 18-104-GF-BMM-JTJ.

NOTICE OF RIGHT TO OBJECT TO FINDINGS AND RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of

Electronic Filing. 28 U.S.C. § 636(b)(1). A United States district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

DATED this 6th day of July, 2022.



John Johnston
United States Magistrate Judge